



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2003-0004; FRL-10025-45]

United States Department of Justice and Parties to Certain Litigation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that information submitted to the Environmental Protection Agency (EPA) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Federal Food, Drug, and Cosmetic Act (FFDCA), and/or the Toxic Substances Control Act (TSCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, has been and will be transferred to the U. S. Department of Justice (DOJ) for transfer to the parties to certain litigation. This transfer of data is in accordance with the CBI regulations governing the disclosure of potential CBI in litigation.

DATES: Access to this information by DOJ and the parties to certain litigation is ongoing and expected to continue during the litigation as discussed in this Notice.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Colby Linter, Program Management and Operations Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8182; email address: lintner.colby@epa.gov.

SUPPLEMENTARY INFORMATION:

This notice is being provided pursuant to 40 CFR 2.209(d) to inform affected businesses that EPA, via DOJ, will provide certain information to the parties and the Court in the matter of *In Re: Aqueous Film-Forming Foams Products Liability Litigating* (MDL No. 2:18-mn-2873-RMG) (D.S.C.) (“AFFF litigation”). The information is contained in documents that have been submitted to EPA pursuant to FIFRA, the FFDCA, and/or TSCA by pesticide registrants or other data-submitters, including information that has been claimed to be, or determined to potentially

contain, CBI.

The AFFF Litigation is Multidistrict Litigation established in December 2018 involving over 1,000 consolidated Per- and polyfluoroalkyl substances (PFAS) cases in the U.S. District Court for the District of South Carolina, primarily alleging tort claims against private parties, including manufacturers, for products liability, public nuisance, and negligence concerning the manufacture and use of Aqueous Film-Forming Foams (AFFF).

Although the primary focus of the litigation is on the manufacturers of AFFF, the United States is a party to 24 lawsuits relating to discharges of AFFF that allegedly contaminated drinking water at various federal sites, such as Air Force bases. The primary federal agencies named as defendants are the Air Force, the National Guard Bureau, and the Department of Defense, but EPA is a named defendant in one *pro se* case.

EPA is under an obligation to respond to Requests for Production (RFPs) in *In Re: Aqueous Film-Forming Foams Products Liability Litigating* (MDL No. 2:18-mn-2873-RMG) (D.S.C.). The case has entered the discovery phase, and although a final Scheduling Order has not yet been entered, the Court has ordered expedited discovery. The documents being produced may include “Confidential Business Information” such as any material or words with rights that may be protected under the U.S. Copyright Act of 1976, Pub. L. 94-553, 90 Stat. 2541, codified, as amended, at Title 17 of the U.S. Code; trade secrets and/or confidential business information protected from disclosure by Section 14 of the TSCA, 15 U.S.C. 2613(a); and/or documents submitted with pesticide registration applications and may include CBI under FIFRA section 10, 7 U.S.C. 136h, including scientific studies subject to the disclosure restrictions of FIFRA section 10(g), 7 U.S.C. 136h(g).

All documents that may be subject to release restrictions under federal law will be designated as “Confidential Information,” “Highly Confidential Information,” and/or “Export Control Information” in the Protective Order (“Case Management Order 4.A”) already filed and publicly available in the AFFF litigation. EPA would only produce such documents in

accordance with the Protective Order, which would require that such documents would be filed under seal and would not be available for public review, unless the information contained in the document has been determined to not be subject to protected status and all CBI has been redacted.

Authority: 7 U.S.C. 301 *et seq.*; 15 U.S.C. 2601 *et seq.*; 21 U.S.C. 301 *et seq.*

Dated: June 28, 2021.

Pamela Myrick,

Director,

Program Management and Operations Division,

Office of Pollution Prevention and Toxics.

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